

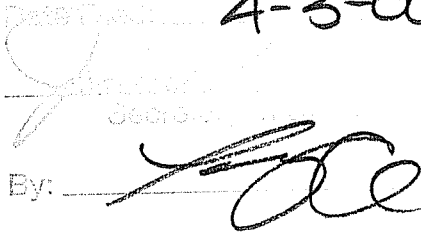
118136..

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PHOENIX

THIS AGREEMENT is entered into this date April 3rd. 2006 pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX, acting by and through its CITY MANAGER, (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by City Charter Chapter II, Section 2.i. to enter into this Agreement and has by Resolution or City Ordinance a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. The work embraced in this Agreement is the construction and maintenance of an Intelligent Transportation System (ITS) Fiber Optic Backbone (FOB), hereinafter referred to as the "Project", which will serve as a critical communications component for the City's Advanced Traffic Management System (ATMS). The City plans to construct the FOB utilizing both City and State right-of-way and infrastructure while providing the State with a continuous fiber optic cable communication loop from the Traffic Operations Center (TOC) to the State ADOT Headquarters Building.
4. The City and State will share portions of the FOB to enhance communications thereby improving traffic safety, aiding incident response and supporting homeland security.

NO. 28153
Filed with the Secretary of State
Date 4-3-06
By: 

II. SCOPE OF WORK

1. The City Will:

a. Prepare and provide design plans, specifications and other such documents and services required for construction bidding and construction of the Project, and submit same to the State for concurrence.

b. Administer contracts for the Project and make all payments to the contractor(s). Be responsible for contractor claims for additional compensation caused by or attributable to the City.

c. Prior to the installation of the fiber optic cable within the State FMS conduit, conduct a field inventory and inspection of all existing conduits and pull boxes related to the Project. If it is discovered that the State conduit or pullbox system is damaged or incomplete, and the repair for the damage or incompleteness is agreed to by the State, the State shall be responsible for repair as needed.

d. Obtain the necessary encroachment permit through the Phoenix Maintenance District Office for the construction of the Project.

e. Designate two (2) fibers on the proposed backbone between I-17 at Camelback Road and the City of Phoenix Traffic Management Center (TMC) located at Phoenix City Hall and also on the existing fiber connection between the City's TMC and State's TOC solely for the State's own use at no cost to the State. Through the combination of this and Section 2 (c) below, the City will provide a complete two (2) fiber loop for both the City and State. Provide or allow to be installed additional devices and equipment necessary for FMS sharing where mutually agreed upon by the City and State for enhancement of the City and State systems.

f. Design, obtain permits, furnish and install innerducts within all designated existing State FMS conduit used by the City at no cost to the State.

g. Design, obtain permits, furnish and install Single Mode Fiber Optic (SMFO) cables in two (2) innerducts designated for City use within the State FMS conduit at no cost to the State.

h. Design, obtain permits, furnish and install one (1) SMFO cable with ninety-six (96) fibers in one (1) innerduct designated for State's use, and also provide one (1) spare pull path designated for State's use, within the State FMS conduit at no cost to the State.

i. Design, obtain permits, furnish and install additional #7 and #9 pull boxes, as necessary, to construct City's and State's fiber optic networks, so they are separated for maintenance purposes at no cost to the State. Only terminate the fiber that the City installs for the State, at the locations that are specifically called out on the Project plans and not in any other locations without prior approval from the State.

j. Design, obtain permits, furnish and install conduit from City's pull box or manhole to the nearest appropriate State pull-box to provide the continuity of the conduit system from the City conduit to the State conduit at no cost to the State.

k. Design, acquire permits, furnish and install four (4) 1.25" conduits along 17th Avenue from Jefferson Street to the State Administration Building at no cost to the State. Within one conduit, the City will provide a twenty-four (24) fiber SMFO branch cable from the City's backbone fiber cable on Jefferson Street to inside the State Administration Building. The remaining conduits will be for City use and future extension of the City's backbone south of the Union Pacific Railroad tracks.

l. Maintain the City Backbone and any associated equipment and conduct routine maintenance activities. Obtain a permit from Phoenix Maintenance District Office for maintenance work within the State's right-of-way. Permit may be renewed on an annual basis.

m. Upon completion of construction and acceptance by both parties, the City shall be responsible for blue staking the City-owned fiber cable within the City's right-of-way. The owner of the fiber cable is responsible for arranging any repairs to damaged fiber optic cable according to blue stake laws.

n. Upon completion of the construction and acceptance by both parties, the City shall provide the State with as-built plans of all of the State's fiber optic cable in both paper and electronic format.

o. Be responsible for the cost of moving the City's share of the fiber, should future widening of the said roadway be necessary.

p. Not be allowed to lease any or part of said fiber constructed herein to any other agency, private company or jurisdiction, for profit.

2. The State Will:

a. Review the design documents required for construction of the Project, and provide comments to the City as appropriate within 10 calendar days of receipt or said design documents shall be deemed approved.

b. Design and submit for City review any changes to the FMS system that may affect the City facilities. Changes will only be made where mutually agreed to by both the City and State as shown on contract plans reviewed by the City.

c. Be responsible for any design consultant and contractor claims for additional compensation caused by Project delays attributable to the State.

d. Designate two (2) fibers on their existing network between the connection to the City's fiber optic backbone at I-17 and Camelback Road and the State TOC at 2302 W. Durango Street (TOC), for the City's use at no cost to the City. Allow installation of equipment to expand the system where shown on contract plans and mutually agreed to by both the City and State.

e. Provide the City a right-of-way use permit to the existing State's 3" FMS conduits at no cost to the City for the purposes described in this Agreement.

f. Grant the City right-of-entry for the purposes of conducting maintenance activities on the City's fiber cable, such as troubleshooting or repair of cable breaks or splices on a yearly permit.

g. Upon completion of construction and acceptance by both parties, the State shall be responsible for blue staking the State fiber cable within the State's right-of-way. If the State-owned fiber cable is damaged, the State will be responsible for repairs according to blue stake laws.

III. BOTH PARTIES AGREE

1. That the State and the City will coordinate with each other when responding to and repairing any damage to either fiber system which may impact the other system through use of shared fiber optic cable, pull boxes, innerduct or conduit.

2. In the event that future construction within the State right-of-way impacts the City backbone, the State shall be responsible for designing and constructing the City's backbone modifications. The City shall review and comment on design plans prepared for construction of modifications to the City's fiber backbone that occurs within the State right-of-way.

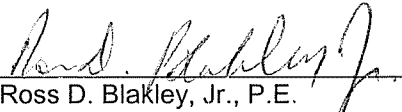
IV. MISCELLANEOUS PROVISIONS

1. This Agreement shall become effective upon filing with the Secretary of State.
2. This Agreement may be cancelled in accordance with Arizona Revised Statutes Sections 38-511.
3. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518 as applicable.
4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this Agreement and both the City and the State shall be afforded the rights, interests and privileges as provided therein, provided however, that should the City make a reasonable request to inspect the records of the State relating to this Project, such records will be produced at a time and location convenient to both parties.
5. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The provisions of Arizona Revised Statutes Section § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".
6. Every payment obligation of the State and City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State or the City as applicable at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State and City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

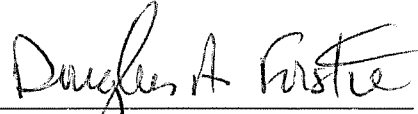
Arizona Department of Transportation Joint Project Administration 205 South 17th Avenue, Mail Drop 616E Phoenix, AZ. 85007 FAX (602) 712-7424	City of Phoenix 200 W. Washington, 6th Floor Phoenix, AZ 85003-1611 Attn: Bob Steele, ITS Manager
Arizona Department of Transportation Transportation Technology Group 2302 W. Durango Street, Mail Drop -PM02 Phoenix, AZ 85009	City of Phoenix Street Transportation Department 200 W. Washington St, 5th Floor Phoenix, AZ 85003-1611 Attn: Ray Dovalina
8. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determination of each Party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written

CITY OF PHOENIX, an Arizona Municipal
Corporation, Frank Fairbanks, City Manager

By 
Ross D. Blakley, Jr., P.E.
Acting Street Transportation Director

STATE OF ARIZONA
Department of Transportation

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

ATTEST

By 
VICKY MIEL
City Clerk



G: 03-056-Phoenix Fiber Optic Backbone
DBB – 2-2006

ATTORNEY APPROVAL FORM

FOR THE CITY OF PHOENIX

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the City of Phoenix, an agreement among public agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declares this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this _____ day of _____, 2006.

Approved as to form
Jesse W. Sears
Attorney ACTING City Attorney
MB

**Complete this form per O.P. 1.906 and A.R. 4.11.
Refer to the City Council Agenda Process Reference Guide for Assistance**

CITY CLERK DEPARTMENT	Council Action Taken: Adopted		
	Ordinance Number:	RCA No.	46528
	Resolution Number: 20166	Contract No.	
	Comments:	Meeting Date	10/20/2004
		Item No.	46

ITEM**CITYWIDE****IGA - CITY OF PHOENIX &
ADOT FOR THE PHOENIX
REGIONAL ITS FIBER OPTIC
BACKBONE PROGRAM**

Request to authorize the City Manager to enter into an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation Department (ADOT) to facilitate the installation of the Fiber Optic Backbone Cable system and share use of conduits and fiber optic cables. The purpose of this agreement is to improve agency operations by establishing a shared, regional, telecommunications network with ADOT and the City of Phoenix. In addition, this cooperation between agencies will provide a regional, multi-user communications network using Intelligent Transportation System (ITS) to improve the support for homeland security.

Financial Impact

There is no financial impact. This agreement allows already budgeted work to take place.

The City of Phoenix and ADOT will operate and maintain each of their respective right-of-way areas.

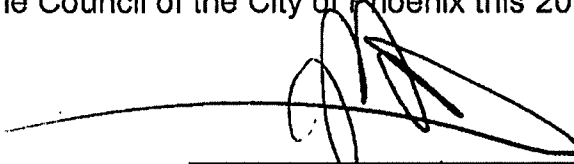
RESOLUTION NO. 20166

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA THROUGH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE PHOENIX REGIONAL INTELLIGENT TRANSPORTATION SYSTEM FIBER OPTIC BACKBONE PROGRAM.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. The City Manager is authorized to enter into an intergovernmental agreement with the State of Arizona through the Arizona Department of Transportation for the Phoenix Regional Intelligent Transportation System Fiber Optic Backbone Program.

PASSED by the Council of the City of Phoenix this 20th day of October, 2004.



MAYOR

ATTEST:



City Clerk

APPROVED AS TO FORM:

 ACTING

City Attorney


REVIEWED BY:



City Manager



2004 OCT 19 AM 8:50
CITY CLERK DEPT.

TERRY GODDARD Attorney General	 OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA	CIVIL DIVISION TRANSPORTATION SECTION Direct Line: 602.542.8837 Facsimile: 602.542.3646
--	---	--

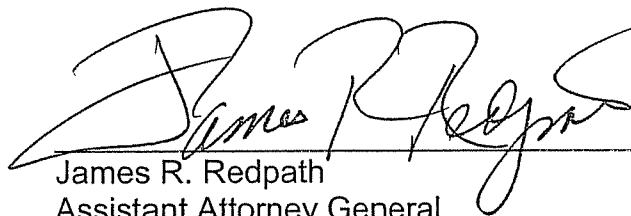
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1511-TRN (JPA 03-056), an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 27 March 2006

Terry Goddard
ATTORNEY GENERAL


James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:936111